IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3033 OF 2006

Harivadan C.Dhagat)
17/17A, Naridshaw Sukhia Street,)
Off. Cawasji Patel Street, Fort,)
Mumbai-400 001.)...Petitioner

versus

1. The Insurance Regulatory & Development)
Authority, 3rd Floor, Parishram Bhavan,)
Basheer Bagh, Hyderabad-500 004.)

2. Union of India,)
Ministry of Law & Justice, Aaykar Bhawan,)
2nd floor, M. K. Road,)
Mumbai-400 020)..Respondents.

Dr. V.V. Tulzapurkar, Senior Advocate, instructed by Ms. Aasifa Khan, for the petitioner.

Mr. Kumar Desai, instructed by M/s. Maneksha & Sethna, for respondent No.1.

Ms. Poornima Kantharia with Mr. R.C. Master for respondent No.2.

CORAM: **SWATANTER KUMAR, C.J.** &
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on : September, 07, 2007
Judgment delivered on: September, 20 ,2007

JUDGMENT (Per Swatanter Kumar, C.J.):

Though there is challenge raised by the petitioner in the present writ petition under Article 226 of the Constitution of India to Regulation 14 of Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000 (hereinafter “the Regulations”), as well as to the circulars issued by the respondents dated 11th September, 2001, 4th December, 2002 and 24th May, 2003 laying down the financial limits for the purpose of categorization of the surveyors/loss assessors and for quashing the letter 15th May, 2006, in so far as it directs the petitioner to pass the examination conducted by the Insurance Institute of India, it may not be necessary for us to either discuss the facts in great detail or examine the merits or otherwise of the contentions raised by the learned counsel appearing for the respective parties, in view of the course we propose to adopt in disposing of the present writ petition.

2. The petitioner is a Chartered Accountant and practicing as such since 11th August, 1960. In the year 1962, he started taking up insurance survey assignments for general insurance business. After enactment of the Insurance (Amendment) Act, 1968, licensing of surveyors or loss assessors was made mandatory as per Section 64

UM of the Insurance Act, 1938 (hereinafter "the Act"). The petitioner applied for a licence and was issued a licence being SLA No. 165 which was valid upto 31st May, 1975, whereafter the petitioner has been continuously getting his licence renewed and is a holder of a valid licence under current Insurance Licence Number SLA/52225/05-10/Exp7/8/2010. After coming into force of Insurance Regulatory and Development Authority Act, 1999, the primary purpose was to protect the interest of holders' of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto. The licensing of the surveyors or loss assessors was being completed by the respondents in accordance with the provisions of the Act as well as the Regulations framed under the provisions of the Act. The petitioner being a holder of the said licence had applied, vide his letter dated 28th April, 2006, to categorise him as a Category-A Surveyor. In response to this letter, the respondents, vide their letter dated 15th May, 2006, informed the petitioner that his categorization could be done only if he passed the examination. The letter dated 15th May, 2006 reads as under:

> "Re; **Claim for categorization as Category 'A' Surveyor for Miscellaneous Fire, LOP and Marine Cargo Classes of Insurance Business in the case of Licenced Surveyors.**
>
> We are in receipt of your letter dated 28/4/06 on the captioned subject. We would like to inform you that

Categorization exercise for existing surveyors was carried out as a one time exercise and adequate opportunity by way of time extension was given at the time the exercise was carried out. The last date for submitting the data to get categorization was March, 2001 and later extended upto 31st March, 2002 and applications received after the last date have not been accepted.

At the moment we do not propose to carry out another exercise for categorization of surveyors who were already existing prior to issuance of licences by IRDA.

In order to get categorization now, you need to enroll as a fresh trainee surveyor and after getting enrollment letter from the Authority undergo training for one year under an "A" or "B" Categorized surveyor in the departments IRDA enrolls you and submit the quarterly reports to the Authority. The relevant forms (Form III & IV) are available on our website i.e. www.irdaindia.org. You also need to pass the examination conducted by Insurance Institute of India. Section-1 is compulsory paper and rest shall be in the departments enrolled by IRDA.

Yours faithfuly,
Sd/-
(T.S. Naik)
Deputy Director."

3. Aggrieved from this action of the respondents, the petitioner filed the present writ petition.

4. In reply, the respondents have taken various objections including the fact that Section 26 of the the Insurance Regulatory and Development Act, 1999 (hereinafter "the IRDA Act") empowers the

Respondents to frame Regulations to carry out the purposes of the IRDA Act and they can make Regulation with regard to any matter which is required to be or may be specified by Regulations or in respect of which provision is to be made or may be made by Regulations. The respondents, in exercise of the powers conferred by Section 42D, 64UM and 114A of the Act, and in consultation with the Insurance Advisory Committee, brought into force the Regulations. The Regulation referred to in Section 42D is the Regulation framed by the Respondents pursuant to the powers given to it under Section 26 of the IRDA Act and the said Act. Clause (1A) of Section 64UM of the said Act states that "every surveyor and loss assessors shall comply with the code of conduct in respect of their duties, responsibilities and other professional requirements as may be specified by the Regulations made by the Authority." It must be mentioned that the Regulation referred to in the present case means the said Regulation. Thus, it will be seen that the Respondents have been specifically empowered by the Parliament to prescribe by way of Regulations the professional requirements. It is stated that the petitioner should hold a proper licence as contemplated under Section 42D of the Act read with Section 64M and should also satisfy all the conditions specified therein and thereafter the petitioner can be categorized in terms of Regulation 14 of the Regulations.

5. During the course of hearing, the learned counsel appearing for the respondents fairly stated that as far as eligibility and licence of the petitioner as a surveyor and loss assessor is concerned, they have no serious dispute thereto. However, proviso to clause (f) of sub-section (4) of Section 42 of the Act clearly states that a person who had been issued a licence under sub-section (1) of Section 42 shall not be required to possess the requisite qualifications, practical training and pass such examination as required by clauses (e) and (f). Thus the disqualification specified under clause (f) would not be of any consequence if the holder of the licence holds a valid licence in terms of the provisions specified therein. Clause (D) of sub-section (1) of Section 64 UM of the Act requires that no licence to act as a surveyor or loss assessor shall be issued unless the person possesses such other technical qualification as may be specified under the regulations made by the Authority and does not suffer any disqualification mentioned in sub-section (4) of Section 42. In terms of sub-clause (i) (a) Clause (D) of sub-section (1) of Section 64 UM of the Act, a person can satisfy the authority that he has been in practice as a surveyor or loss assessor on the date of commencement of the Insurance Regulatory and Development Authority, 1999. Under proviso to Clause

(BA) of sub-section (1) of Section 64 UM of the Act, any licence issued immediately before coming into force of that Act shall be deemed to have been issued in accordance with the regulations providing for such licence. In face of these statutory provisions, the learned counsel appearing for the respondents fairly stated that the petitioner holds a licence and there is no dispute in that regard. The only contention is that in terms of the letter dated 15th May, 2006, the petitioner should be called upon to qualify the test.

6. Having considered all the above provisions, we are of the view that the categorization of the petitioner cannot be refused on the grounds stated in the said letter. No provision has been brought to our notice under the provisions of the Act or even under the regulations which require the person to pass such an examination even if he was so exempted in accordance with the provisions of Section 44 of the Act.

7. Regulation 14 of the Regulations deals with the categorization of surveyors and loss assessors. It requires the person to possess requisite professional qualification and satisfy any other criteria as may be specified by the authorities from time to time. Neither any document has been brought on record nor any statutory provision has been

brought to the notice of the Court which makes it compulsory for the applicant who is holding a valid licence under the above provisions to take the said examination. There is no dispute to the fact that the petitioner is holding a licence since the year 1970. Clause relating to disqualification has to be given a strict construction and cannot be given a meaning which it does not convey by specific language. In accordance with the provisions placed on the Court file, there is no compulsive clause reflected in any of the statutory provisions which can support the letter dated 15th May,2006, issued by the respondents. Consequently, we quash the said letter dated 15th May, 2006. However, the petitioner cannot be granted the relief of categorization by the Court. This will fall entirely in the domain of the respondents. Thus we grant liberty to the petitioner to make a proper representation in that behalf to the respondents who shall thereafter pass an order in accordance with law and the observations made in this judgment.

8. The writ petition is disposed of in the above terms leaving the parties to bear their own costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.